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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 432

WILLIAM E. LAMB, *Petitioner,*

vs.

STERLING B. CRAMER, ET AL., *Respondents.*

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

(The jurisdiction included)

EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

Page

PETITION FOR CERTIORARI.

A. SUMMARY STATEMENT OF THE MATTER INVOLVED 1

B. REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT..... 4

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I. OPINION OF THE COURT BELOW..... 7

II. JURISDICTION 7

III. STATEMENT OF THE CASE 8

IV. SPECIFICATION OF ERRORS 8

V. ARGUMENT 9

1. The Court of Appeals Had no Jurisdiction to Reverse the Judgment Discharging the Rule to Show Cause and Dismissing the Petition for Contempt Because it Was a Judgment for the Defendant in a Criminal Case and no Appeal is Permitted from such Judgments 9

2. Even if the Court of Appeals Might on Some Ground Reverse such a Judgment it could not do so by Treating it as an Order which Merely Quashed Service of the Citation 10

3. Even if the Contempt Proceeding was for Civil and not Criminal Contempt, the Court of Appeals had no Jurisdic-

Page

tion, Because no Appeal was Taken from the Final Decree Entered in the Case 12

Conclusion 12

TABLE OF CASES.

Bessette v. W. B. Conkey Co., 194 U. S. 324 . . 5, 9
Chetwood, In re, 165 U. S. 443 8
Chiles, In re, 89 U. S. 157 11
Christensen Engineering Co., Matter of, 194 U. S. 458 . . . . . 5, 6, 9, 12
Clay v. Waters, 178 Fed. 385 . . . . . 6, 12
Cooke v. United States, 267 U. S. 517 8
Doyle v. London Guarantee Co., 204 U. S. 599 6, 12
Fayerweather v. Ritch, 195 U. S. 276 . . . . . 5, 11
Gompers v. Bucks Stove & Range Co., 221 U. S. 418 . . . . . 5, 6, 9, 12
Hultberg v. Anderson, 214 Fed. 349 . . . . . 6, 12
Midland Bank v. Ins. Co., 277 U. S. 346 . . . . . 5, 11
Slaker v. O'Connor, 278 U. S. 188 11
U. S. v. Bittner, 11 Fed. (2d) 93 . . . . . 5, 10
U. S. v. Sanges, 144 U. S. 310 . . . . . 5, 10
Wingert v. Kieffer, 29 Fed. (2d) 59 . . . . . 5, 10

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PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

(The jurisdiction included)

May it Please the Court:

The petition of William E. Lamb respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

1. The fundamental question involved in this case is whether a circuit court of appeals has jurisdiction, on any ground, to reverse a judgment of a district

court which in fact discharged a rule to show cause and dismissed a petition for contempt in a criminal contempt case.

2. Assuming that a circuit court of appeals might on some ground reverse such a judgment, the further question is whether it could reverse such a judgment by treating it as an order which merely quashed *service* of the citation.

3. Assuming that the judgment was a judgment in a civil and not a criminal contempt proceeding, the question is whether the court of appeals could reverse such a judgment except upon an appeal from the final decree in the case in which the civil contempt proceeding was pending.

The contempt proceeding was instituted in an equity case pending in the district court on a petition filed therein by the plaintiff in the case and was brought against petitioner who was an attorney for one of the defendants in that case (R., 125). At the time the contempt proceeding was instituted there was no ground for summary civil relief based upon any order of the court because up to that time no order of the district court had been entered or violated and no receiver had been appointed. (R., 196.) After the institution of the contempt proceeding (R., 127), but prior to the entry of the judgment appealed from (R., 177), the principal case in which the contempt proceeding arose was terminated by the entry of a consent decree which provided that it should be without prejudice to petitioner. (R., 146.) No appeal was taken from this consent decree. (R., 177, 179.)

The judgment appealed from was entitled a "decree." It stated that "the Court is of the opinion that the rule to show cause should be *discharged* and the petition *dismissed* without prejudice * * * to any interested party to proceed civilly," and it ordered that "the rule to show cause is hereby *discharged* and the said petition is hereby *dismissed* without prejudice," etc. (R., 176.) No other order or judgment was rendered.

The judgment also stated that it was rendered upon the petition, the citation, and a motion to quash the citation and dismiss the petition. (R., 175.) Since, however, petitioner had previously filed a full answer to the contempt charge (R., 147-167), and his motion to quash the citation and dismiss the petition stated that it was based upon the ground, among others, that the petition, the citation, *and* the *answer*, showed that the district court was without *statutory* jurisdiction under Section 385, Title 28, U. S. Code, to proceed with the contempt proceeding (R., 174), the answer was also before the court when its judgment was rendered.

No error was assigned to the judgment *dismissing* the petition and *discharging* the rule for contempt. The only errors assigned were that the petition and citation were sufficient to institute an ordinary civil proceeding in equity ancillary to the principal case; that petitioner's answer in the contempt proceeding (which, in order to avoid just such claims, was made on special appearance for the sole purpose of answering the contempt charge only) (R., 147) constituted an appearance with a waiver of all objections to the jurisdiction of the district court over him in that ancillary civil proceeding; and (notwithstanding no

order quashing service of any process was ever made) that the district court erred in quashing *service* of the citation as ordinary civil process. (R., 179-180.)

In the court of appeals petitioner moved to dismiss the appeal on the ground that the judgment appealed from discharged a rule to show cause and dismissed a petition for contempt and that if the contempt proceeding was criminal the court of appeals had no jurisdiction of an appeal from a judgment in favor of the defendant, while, if it was civil, the judgment appealed from was an interlocutory order entered in a proceeding in equity previously terminated by the entry of a consent decree, from which consent decree no appeal was or could be taken. (R., 198)

The court of appeals found that the district court had merely quashed service of the citation as a citation *for contempt* on the ground that petitioner, a resident of the State of Illinois, was present in the jurisdiction of the court as an attorney at law and therefore immune from such process. (R., 208-209) It denied the motion to dismiss the appeal, on the ground that an order quashing service of a citation for contempt was final and appealable (R., 209), and reversed the judgment of the district court discharging the rule and dismissing the petition for contempt.

B.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

1. Under Section 225, Title 28, U. S. Code, the Circuit Court of Appeals had no jurisdiction of the appeal in this case because the judgment appealed from was a judgment for the defendant in a criminal case

and no appeal is permitted from such a judgment, and the decision of the court of appeals that it did have jurisdiction of the appeal is in conflict with the decisions of this Court and with the decisions of the Circuit Court of Appeals for the Second Circuit.

(a) The judgment appealed from was rendered in a criminal contempt case.

Bessette v. W. B. Conkey Co., 194 U. S. 324.
Matter of Christensen Engineering Co., 194 U. S. 458.
Gompers v. Bucks Stove & Range Co., 221 U. S. 418, 441-4, 448.

(b) The court of appeals had no jurisdiction to reverse such a judgment.

U. S. v. Bittner, 11 Fed. (2d) 93, 95.
Wingert v. Kieffer, 29 Fed. (2d) 59.
U. S. v. Sanges, 144 U. S. 310.

2. Even if the court of appeals might on some ground reverse the judgment appealed from, it could not do so by treating it as an order which merely quashed *service* of the citation.

In this respect the decision of the circuit court of appeals is also in conflict with the decisions of this Court.

Fayerweather v. Ritch, 195 U. S. 276, 298-9.
Midland Bank v. Ins. Co., 277 U. S. 346.

3. Even if the judgment was one rendered in a civil and not in a criminal contempt proceeding the circuit court of appeals had no jurisdiction to reverse it because no appeal was taken from the final decree in the case.

Even if the decision of the circuit court of appeals was that it had jurisdiction to review such a judgment of the district court its decision is in conflict with the

decisions of this Court and decisions of the circuit courts of appeals for the seventh and eighth circuits.

Doyle v. London Guarantee Co., 204 U. S. 599.
Matter of Christensen Engineering Co., 194 U. S. 458.
Gompers v. Bucks Stove & Range Co., 221 U. S. 418.
Hultberg v. Anderson, 214 Fed. 349.
Clay v. Waters, 178 Fed. 385.

4. The circuit court of appeals erred in taking jurisdiction of the appeal.

5. The circuit court of appeals erred in reversing the judgment appealed from.

Wherefore, this petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Fifth Circuit commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and of the proceedings in the case numbered and entitled on its docket, No. 6004, *S. B. Cramer et al., Plaintiff-Appellant, v. William E. Lamb, Defendant-Appellee,* and that the said judgment of the Circuit Court of Appeals for the Fifth Circuit may be reviewed by this Honorable Court, and that this petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

WILLIAM E. LAMB, *Petitioner,*
By
EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I.

THE OPINION OF THE COURT BELOW.

The opinion of the Circuit Court of Appeals for the Fifth Circuit was rendered on April 9, 1931, and is reported in 48 Fed. (2d) 537. (R. 207) The decree of the district court which was rendered without other opinion, appears on pages 175-177 of the record herein.

II.

JURISDICTION.

1. The statutory provision believed to sustain jurisdiction of this court is Section 347, Title 28, U. S. Code.

2. The judgment sought to be reviewed became final upon the denial of the petition for rehearing on July 6, 1931. (R., 214.) It was first entered on April 9, 1931. (R., 209.) The time for filing petition for rehearing was extended to June 1, 1931, by an order of the court of appeals, entered April 24, 1931 (R., 210), and the petition for rehearing was filed on June 1, 1931. (R., 211.)

3. The contempt proceeding, in which the judgment sought to be reviewed was rendered, was instituted by petition filed in the case of *S. B. Cramer v. Florence T. Holland, et al.*, No. 129 in Equity, pending in that court. (R., 122-126.) Its object was to have petitioner "held in contempt of court" for taking "trust funds" from the "authority" of the district

court in the *Cramer case.* (R., 125.) Actually the charge was based upon the payment of fees, in the ordinary course of business, to petitioner by his client in the *Cramer case.* (R., 150.) The district court discharged the rule to show cause and dismissed the petition for contempt. (R., 175-177.) The order was appealed to the Circuit Court of Appeals for the Fifth Circuit (R., 176-177), which court found that the district court had merely quashed service of the citation for contempt and reversed the judgment discharging the rule to show cause and dismissing the petition for contempt upon findings that the citation was properly *served* and that the petition stated a ground for relief in a contempt proceeding. (R., 208-209.)

4. Cases believed to sustain the jurisdiction of this court to issue the writ are:

In re Chetwood, 165 U. S. 443, 461-2.
Cook v. U. S., 267 U. S. 517.

III.

STATEMENT OF THE CASE.

A statement of the case has been given under heading "A" in the petition and for the sake of brevity will not be repeated.

IV.

SPECIFICATION OF ERRORS.

The errors intended to be urged are those specified under heading "B" in the petition, and for the sake of brevity will not be repeated.

V.

ARGUMENT.

1. The Court of Appeals Had No Jurisdiction to Reverse the Judgment Discharging the Rule to Show Cause and Dismissing the Petition for Contempt Because it was a Judgment for the Defendant in a Criminal Case and no Appeal is Permitted from Such Judgments.

Petitioner was not a party to the equity case out of which the contempt proceeding arose. No order of any kind had been entered in that case or violated by petitioner when the contempt proceeding was instituted so that there was not at that time any ground for summary civil relief. The alleged contumacious conduct occurred, and the contempt proceeding was instituted, before the final consent decree was entered, but judgment in the contempt proceeding was rendered after the consent decree had been entered and provided that it was without prejudice to the *civil* rights, if any, of the parties concerned. Under such circumstances the contempt proceeding was necessarily a proceeding for criminal contempt.

Matter of Christensen Engineering Co., 194 U. S. 458.
Bessette v. W. B. Conkey Co., 194 U. S. 324.
Gompers v. Bucks Stove & Range Co., 221 U. S. 418.

Since the proceeding was for criminal contempt, the court of appeals had no jurisdiction of an appeal from the judgment because it was a judgment in favor of the defendant in a criminal case.

U. S. v. Bittner, 11 Fed. (2d) 92.
Wingert v. Kieffer et al., 29 Fed. (2d) 59.
U. S. v. Sanges, 144 U. S. 310.

2. Even if the Court of Appeals Might on Some Ground Reverse Such a Judgment it Could Not do so by Treating it as an Order Which Merely Quashed Service of the Citation.

The judgment of the district court is perfectly clear. When that court stated it was of the opinion the rule to show cause should be discharged and the petition dismissed without prejudice to proceed civilly, its judgment discharging the rule to show cause and dismissing the petition did not merely quash *service* of the citation for contempt. There was no dispute between the parties on this point. All were agreed that the district court *dismissed* the contempt proceeding. In their brief in the Court of Appeals in reply to appellee's brief in support of his motion to dismiss the appeal, appellants stated, on page 2:

> "* * * There is no error assigned by appellant upon the action of the court below in *dismissing* the contempt charge * * *. We can therefore for the purpose of this appeal agree with counsel that the court was correct in *dismissing* the contempt charge * * *. The contempt charge has been *dismissed* and the court need pay no further attention thereto for the reason that no error is assigned on the part of the court in *dismissing* the citation." (Italics ours

The foregoing brief is filed under separate cover as an Appendix to this brief.

Under these circumstances the decision of the court

of appeals which found that the district court erred in quashing the service of the citation for contempt and which reversed the judgment discharging the rule to show cause and dismissing the petition for contempt, is arbitrary and void.

Fayerweather v. Ritch, 195 U. S. 276, 298-99.
Midland Bank v. Ins. Co., 277 U. S. 346.

Furthermore, since appellants did not assign any error to the judgment of the district court which discharged the rule to show cause and dismissed the petition for contempt (R. 179-180) but on the contrary expressly admitted in the court of appeals that that judgment was correct, there was nothing for the court of appeals to consider. The errors assigned by appellants could have no application in this case, both because no judgment quashing *service* of any process was ever rendered and because a contempt proceeding, being fundamentally different from an ordinary civil proceeding in equity, could not furnish a basis for an ordinary civil proceeding. *In re Chiles,* 89 U. S. 157. Thus the only issue presented by the assignment of errors was frivolous and the only proper course for the court of appeals would have been to dismiss the appeal.

Slaker v. O'Connor, 278 U. S. 188.

3. Even if the Contempt Proceeding Was For Civil and Not Criminal Contempt, the Court of Appeals Had No Jurisdiction, Because No Appeal Was Taken From the Final Decree Entered in the Case.

A civil contempt proceeding is a dependent part of the civil case in which it arises and can only be reviewed on appeal from the final judgment in the principal case. In this case the principal case was terminated by a consent decree after the contempt proceeding was instituted. That consent decree expressly provided that it should be without prejudice to petitioner, and no appeal was taken from it. The appeal was thus from an interlocutory order entered in a case terminated by a consent decree, and the court of appeals was without jurisdiction to review the order.

Gompers v. Bucks Stove & Range Co., 224 U. S. 418.
Doyle v. London Guarantee Co., 204 U. S. 599.
Matter of Christensen Engineering Co., 194 U. S. 458.
Hultberg v. Anderson, 214 Fed. 349.
Clay v. Waters, 178 Fed. 385.

Conclusion.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers in order that the conflict between the decisions of this Court and other Courts of Appeal on the one hand and the decision of the Court of Appeals for the Fifth Circuit on the other hand as to the jurisdiction of circuit courts of appeal in a

case of this nature may be removed and in order that the jurisdiction of the Circuit Court of Appeals for the Fifth Circuit may be confined in this case within the limits prescribed by statute, and that to such end a writ of certiorari should be granted and this Court should review and reverse the decision of the Circuit Court of Appeals for the Fifth Circuit.

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Counsel for Petitioner.

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APPENDIX TO BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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